

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

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| In the Matter of                               | ) |                      |
|  | ) |                      |
| Amendment of Part 74 of the Commission's Rules | ) | MB Docket No. 18-119 |
| Regarding FM Translator Interference           | ) |                      |

**ORDER ON RECONSIDERATION**

**Adopted: October 6, 2020**

**Released: October 6, 2020**

By the Commission:

**I. INTRODUCTION**

1. In this *Order on Reconsideration*, we address four petitions for reconsideration (collectively, Petitions)<sup>1</sup> seeking reconsideration of certain aspects of the *Report and Order* in this proceeding.<sup>2</sup> As described below, we dismiss or deny the Petitions.<sup>3</sup>

**II. BACKGROUND**

2. In the *Report and Order*, we adopted new rules to improve the FM translator interference complaint and resolution process. In relevant part, we: (1) gave FM translators the flexibility, upon a showing of interference to or from any other broadcast station, to change channels to any available same-band channel using a minor modification application;<sup>4</sup> (2) standardized the information that must be compiled and submitted by any station claiming interference, including the minimum number of listener complaints proportionate to the signal coverage of the complaining station and undesired-to-desired (U/D)

<sup>1</sup> The Petitions were filed by: (1) Charles M. Anderson (Anderson) on July 11, 2019 (Anderson Petition); (2) the LPFM Coalition on July 15, 2019 (LPFM Coalition Petition); (3) KGIG-LP, Salida, California/Fellowship of the Earth (Fellowship) on July 15, 2019 (Fellowship Petition); and (4) Skywaves Communications LLC (Skywaves) on July 15, 2019 (Skywaves Petition). An additional petition filed by Louis P. Vito on July 16, 2019, was withdrawn at the request of counsel on December 11, 2019, and is accordingly dismissed. Notice of the filing of the Petitions was published in the Federal Register on July 31, 2019. See Petitions for Reconsideration of Action in Proceeding, 84 Fed. Reg. 37228 (July 31, 2019) (setting August 15, 2019, as deadline for oppositions and August 26, 2019, as deadline for replies). On July 18, 2019, REC Networks filed comments supporting the LPFM Coalition Petition and opposing the Anderson Petition (REC Opposition). On August 15, 2019, the National Association of Broadcasters (NAB) filed an opposition to the LPFM Coalition and Fellowship Petitions (NAB Opposition). On August 15, 2019, Media Alliance filed comments in support of the LPFM Coalition Petition (Media Alliance Comments). On August 15, 2019, Beasley Media Group, LLC; Cox Media Group, LLC; Entercom Communications Corp.; iHeart Communications, Inc.; Neuhoff Corp.; and Radio One Licenses, LLC/Urban One, Inc. (collectively, Joint Commenters) filed an opposition to the Anderson Petition (Joint Opposition). On August 26, 2019, Anderson filed a reply to the Joint Commenters (Anderson Reply). On August 26, 2019, the LPFM Coalition filed a reply to the NAB and Joint Oppositions (LPFM Coalition Reply).

<sup>2</sup> *Amendment of Part 74 of the Commission's Rules Regarding FM Translator Interference*, Report and Order, 34 FCC Rcd 3457 (2019) (*Report and Order*). The new translator interference rules became effective August 13, 2019. *Media Bureau Announces August 13, 2019, Effective Date of Amended Rules for FM Translator Interference*, Public Notice, 34 FCC Rcd 7004 (MB 2019) (*Effective Date Public Notice*).

<sup>3</sup> On July 15, 2019, the LPFM Coalition filed a request for a stay of the new rules (Stay Request). On July 22, 2019, NAB filed an opposition to the Stay Request, to which the LPFM Coalition replied on July 29, 2019. Because we act on the LPFM Coalition Petition here, we dismiss the LPFM Stay Request as moot.

<sup>4</sup> *Report and Order*, 34 FCC Rcd at 3460, para. 5.

data demonstrating the relative signal strength at each listener location (zone of potential interference)<sup>5</sup>; and (3) established an outer contour limit of 45 dBu signal strength of the complaining station within which interference complaints will be considered actionable.<sup>6</sup>

3. *Standard of Review.* Pursuant to section 1.429 of the Commission's rules, parties may petition for reconsideration of final orders in a rulemaking proceeding.<sup>7</sup> Reconsideration is generally appropriate only where the petitioner shows either a material error or omission in the original order or raises additional facts not known or not existing until after the petitioner's last opportunity to respond.<sup>8</sup> The Commission may dismiss a petition for reconsideration that is raised merely for the purpose of again debating arguments that have previously been considered and rejected.<sup>9</sup> A petition for reconsideration that relies on facts or arguments which have not previously been presented to the Commission will be granted only under the following circumstances: (1) the facts or arguments relied on relate to events which have occurred or circumstances which have changed since the last opportunity to present such matters to the Commission; (2) the facts or arguments relied on were unknown to petitioner until after its last opportunity to present them to the Commission, and it could not through the exercise of ordinary diligence have learned of the facts or arguments in question prior to such opportunity; or (3) the Commission determines that consideration of the facts or arguments relied on is required in the public interest.<sup>10</sup>

### III. DISCUSSION

#### A. Channel Changes

4. *Preclusion studies.* We dismiss and, on alternative and independent grounds, deny the LPFM Coalition Petition and Fellowship Petition argument that section 5(1) of the Local Community Radio Act (LCRA) requires an LPFM preclusion study to be included with each translator station modification application.<sup>11</sup> In relevant part, LCRA section 5(1) provides that the Commission, "when licensing *new* FM translator stations, FM booster stations, and low power FM stations, shall ensure that . . . licenses are available to FM translator stations, FM booster stations, and low-power FM stations."<sup>12</sup> In the *Report and Order*, we held that preclusion studies were not required for translator station modification applications because LCRA section 5 pertains only to the licensing of new rather than existing stations.<sup>13</sup> Because we previously considered and rejected the argument that LCRA section 5(1) mandates preclusion studies for translator modification applications, we dismiss it on procedural grounds.

5. On alternative and independent grounds, we deny Fellowship's preclusion study argument on the merits. As noted above, section 5(1) limits the LCRA's requirements to the licensing of

<sup>5</sup> *Report and Order*, 34 FCC Rcd at 3463-71, paras. 11-26.

<sup>6</sup> *Id.* at 3475-81, paras. 36-48.

<sup>7</sup> 47 CFR § 1.429(a).

<sup>8</sup> *WWIZ, Inc.*, 37 F.C.C. 685, 686 (1964), *aff'd. sub nom., Lorain Journal Co. v. FCC*, 351 F.C.C.2d 824 (D.C. Cir. 1965), *cert. denied*, 383 U.S. 967 (1966).

<sup>9</sup> *Id.* See 47 CFR § 1.429(l)(3) (providing for dismissal of a petition for reconsideration that plainly does not warrant consideration by the Commission, for example, "if the petition rel[ies] on arguments that have been fully considered and rejected by the Commission within the same proceeding"); *Connect America Fund*, WC Docket No. 10-90, Sixth Order on Reconsideration and Memorandum Opinion and Order, 28 FCC Rcd 2572, 2573, para. 3 (2013).

<sup>10</sup> 47 CFR § 1.429(b).

<sup>11</sup> See Fellowship Petition at 3-6; LPFM Coalition Petition at 18-19, paras. 44-48.

<sup>12</sup> *Local Community Radio Act of 2010*, Pub. L. No. 111-371, 124 Stat. 4072 (2011), section 5(1) (LCRA section 5(1)) (emphasis added).

<sup>13</sup> *Report and Order*, 34 FCC Rcd at 3462, para. 9.

“new” translator stations. Fellowship offers no support for interpreting the phrase “new . . . stations” as used in section 5(1) to include modifications of existing stations,<sup>14</sup> nor does it provide a rationale to persuade us to reconsider our precedent establishing that section 5 of the LCRA does not apply to translator modification applications.<sup>15</sup> The *Report and Order* modified the Commission’s rules concerning translator station modification applications, classifying non-adjacent channel changes as minor modifications. LCRA section 5(1) does not apply to such modifications.

6. We also reject Fellowship’s argument that the Commission’s previous efforts to preserve LPFM spectrum opportunities through the use of preclusion studies mandates the same approach for minor modification applications authorized by the *Report and Order*.<sup>16</sup> Fellowship relies primarily<sup>17</sup> on the Media Bureau’s 2010 *Mattoon* decision, which listed “LPFM spectrum availability” as one of several factors that it would take into account when considering waiver requests to allow long-distance translator “hops” (non-mutually-exclusive transmitter site relocations).<sup>18</sup> As a Bureau-level waiver decision, *Mattoon* is of little precedential value outside the facts presented in it and subsequent, similar waiver cases, and we disavow any attempt to apply *Mattoon* outside the context of physical relocation of translator stations.<sup>19</sup> There is no support either in the Commission’s precedent or the language of the LCRA for the contention that a minor modification application requesting a channel change must be accompanied by a preclusion study.<sup>20</sup> Requiring such preclusion studies would be contrary to the aim of

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<sup>14</sup> LCRA Section 5(1) requires the Commission to ensure that “licenses are available” to LPFM stations (among others) when licensing “new” translator stations (among others). As explained in note 20, *infra*, interpreting “new” to include modifications would be inconsistent with the purpose of this section because a modification of an existing station does not introduce a new translator station into a market and therefore has little or no impact on the availability of LPFM licenses.

<sup>15</sup> See *Punjabi American Media, LLC*, 35 FCC Rcd 6869, 6876-77 (2020) (“The Application at issue here involved modification of an existing translator station’s facilities, not authorization of a “new” FM translator station, and thus section 5 of the LCRA does not apply.”); *Report and Order*, 34 FCC Rcd at 3462, para. 9.

<sup>16</sup> See Fellowship Petition at 3-6.

<sup>17</sup> The Fellowship Petition also references “previously used grids to ensure hypothetical LPFM facilities in the LPFM Fourth Report and Order and Third Order.” Fellowship Petition at 4. The Bureau conducted preclusion studies prior to issuing certain construction permits for new translator stations or major modifications of translator licenses in Auction 83. We agree with NAB that those preclusion studies were “required to address the unique circumstances of that auction, including the unprecedented 13,777 translator applications, with no limit on the number per applicant or location. . . . [T]he special procedures used in Auction 83 to prevent new translator applications from absorbing all available secondary service spectrum bear no relation to the individual application of a translator licensee to change frequencies as a minor change.” NAB Opposition at 6-7. The Auction 83 preclusion studies were an extraordinary, *ad hoc* measure that was appropriate given the unprecedented volume of applications in that proceeding, but not of general applicability for all new or modified secondary service licensing.

<sup>18</sup> Fellowship Petition at 3-4; see also *John F. Garziglia, Esq.*, Letter Decision, 26 FCC Rcd 12685 (MB 2011) (*Mattoon*).

<sup>19</sup> Although the Commission endorsed the Bureau’s continued use of *Mattoon* waivers in a 2015 proceeding, the Commission did not address any concern about future LPFM licensing opportunities or the use of preclusion studies in its directive for the Bureau’s future work in this area. See *Revitalization of the AM Radio Service*, First Report and Order, 30 FCC Rcd 12145, 12151, para. 13 (2015).

<sup>20</sup> We also observe, as a practical matter, that a channel change does not introduce a new translator station into a market and therefore can have little or no impact on the number of potential LPFM opportunities in that market. For a similar reason, when it sought to preserve LPFM opportunities in spectrum-limited markets, the Commission disallowed “move-in” translator modifications but accepted applications proposing to move a translator facility from one location to another within the same market. See *Creation of a Low Power Radio Service and Amendment of Service and Eligibility Rules for FM Broadcast Translator Stations*, Third Further Notice of Proposed Rulemaking, 26 FCC Rcd 9986, 9998, para. 31 (2011) (*LPFM Third Further Notice*).

this proceeding, namely, to streamline the translator interference rules and to expedite the translator complaint resolution process.<sup>21</sup> In addition, we note that it has been the Commission's longstanding policy to allow LPFM stations to file similar modification applications seeking channel changes to resolve interference without preclusion studies.<sup>22</sup> This practice similarly enables the continued operation of LPFM stations facing interference issues, in a streamlined and expeditious manner, and we are not persuaded to treat co-secondary services unequally. For these reasons, we deny the Fellowship Petition on this issue.

7. Finally, we reject the LPFM Coalition's contention that because the new rules affect future LPFM licensing, section 5(1) must be applicable.<sup>23</sup> As stated above, LCRA section 5(1) provides that the Commission, "when licensing new FM translator stations, FM booster stations, and low power FM stations, shall ensure that . . . licenses are available to FM translator stations, FM booster stations, and low-power FM stations."<sup>24</sup> The LPFM Coalition confuses the condition precedent in this provision—i.e., that it only applies "when licensing new FM translator stations, FM booster stations, and low power FM stations"—with the consequent duty imposed on the Commission, namely, to ensure that "licenses are available . . . ."<sup>25</sup> It is true that when determining whether licenses are available, the Commission must consider the availability of both existing and future licenses—thus ensuring adequate spectrum availability for LPFM, translator, and booster stations.<sup>26</sup> But this statutory mandate applies only when licensing "new" stations, not when it is processing modification applications. Therefore, we uphold our conclusion that LCRA section 5 only applies during the processing of new station applications.

8. *Ashbacker*. We dismiss and, on alternative and independent grounds, deny the Fellowship Petition assertion that the non-adjacent channel change rule for translators violates the *Ashbacker* doctrine.<sup>27</sup> We dismiss this argument as untimely because it could have been raised earlier in the proceeding in response to the *NPRM*.<sup>28</sup> On alternative and independent grounds, we deny this

<sup>21</sup> See *Report and Order*, 34 FCC Rcd at 3457, para 1.

<sup>22</sup> See NAB Opposition at 5, n.21; 47 CFR § 73.870(a) ("Minor changes of LPFM stations may include . . . [c]hanges in frequency to adjacent or IF frequencies or, upon a technical showing of reduced interference, to any frequency").

<sup>23</sup> See LPFM Coalition Petition at 18-19, paras. 44-48. The LPFM Coalition also argues that the Commission mistakenly identified the New Jersey Broadcasters Association (NJBA) as an "LPFM Advocate." LPFM Coalition Petition at 21, para. 55 (citing *Report and Order*, 34 FCC Rcd at 3481, para. 47). In the *Report and Order*, the Commission stated that the outer contour limit does not conflict with LCRA section 5(3), as had been argued by LPFM advocates (specifically, REC and the LPFM Advocacy Group). See *Report and Order*, 34 FCC Rcd at 3481, para. 47 and n.182. The Commission also addressed and rejected NJBA's separate argument that the outer contour limit could conflict with another provision of the LCRA, section 7(6). See *Report and Order*, 34 FCC Rcd at 3481, n.181. Therefore, LPFM's complaint has no factual foundation—or legal significance—and will not be considered further here.

<sup>24</sup> LCRA section 5(1).

<sup>25</sup> See LPFM Coalition Petition at 18-19 (internal citations omitted); see also Fellowship Petition at 4.

<sup>26</sup> See *LPFM Fourth Report and Order*, 27 FCC Rcd at 3372, para. 16.

<sup>27</sup> Fellowship Petition at Fellowship Petition at 1-3; *Ashbacker Radio Corp. v. FCC*, 326 U.S. 327 (1945) (*Ashbacker*); *Robert D. Augsberg*, Letter Decision, 29 FCC Rcd 11287 (MB 2014) (*Augsberg*) (holding that grant of a waiver request to allow a single long-distance transmitter move as a minor modification would violate potentially competing applicants' *Ashbacker* rights).

<sup>28</sup> *Amendment of Part 74 of the Commission's Rules Regarding FM Translator Interference*, Notice of Proposed Rulemaking, 33 FCC Rcd 4729, paras. 11-14 (2018) (*NPRM*) (proposing to modify Section 74.1233(a)(1) of the Rules to define an FM translator's change to any available FM channel as a minor change, upon a showing of interference to or from any other broadcast station). Fellowship relies on facts and arguments not presented to the Commission before the *Report and Order* was adopted and has not attempted to demonstrate compliance with the exceptions for such filings found in section 1.429(b) of our Rules. See paragraph 3, *supra*.

argument on the merits. In *Ashbacker*, the Supreme Court held that where two applications are mutually exclusive, the grant of one without considering the other violates the statutory right of the second applicant to comparative consideration.<sup>29</sup> Except in circumstances not applicable here—such as where potentially competing applications have been blocked by a freeze order or filing window<sup>30</sup>—the *Ashbacker* right to comparative consideration does not apply to prospective applicants, only to those who have filed “timely, mutually exclusive applications.”<sup>31</sup> It is well established that the Commission may promulgate rules that limit the ability of parties to file mutually exclusive applications.<sup>32</sup> In the *Report and Order*, we explained that it would serve the public interest to allow FM translator stations to remediate interference by changing channels and to treat such changes as minor, thereby foreclosing competing applications, because it would provide a low cost way to resolve interference with little or no reduction in service area and help keep translators on the air.<sup>33</sup> To treat these changes as major, and therefore subject to competing applications, would undermine our efforts to provide FM translator stations with an efficient means to remediate interference. Fellowship does not dispute the public interest benefits of this approach to interference remediation. Therefore, we find no merit to Fellowship’s argument that the non-adjacent channel change process set out in the *Report and Order* violates *Ashbacker*.<sup>34</sup>

#### B. Required Contents of Translator Interference Claims

9. *Number of listener complaints.* We affirm our revision of section 74.1203(a)(3) in the *Report and Order* to establish three as the minimum number of listener complaints by an LPFM station with fewer than 5,000 people within its protected contours.<sup>35</sup> We dismiss the Anderson Petition’s argument that the minimum number of listener complaints to be submitted by LPFM stations should be set at six, instead of three, in order to prevent abuse due to a low threshold.<sup>36</sup> The required minimum number of listener complaints was a central issue in this proceeding and received extensive commentary by Anderson and others.<sup>37</sup> Ultimately, we rejected a universal six-listener minimum in favor of a more tailored and proportionate approach based on the total population covered by the complaining station’s protected contour.<sup>38</sup> In doing so, we took into account comments by LPFM advocates, ultimately adopting three complaints as the minimum for LPFM stations with less than 5,000 people within their

<sup>29</sup> *Ashbacker*, 326 U.S. at 333.

<sup>30</sup> See *Bachow Communications, Inc. v. FCC*, 237 F.3d 683 (D.C. Cir. 2001) (holding that *Ashbacker* rights inhere to potential applicants whose right to file a timely competing application is frustrated by a Commission freeze order); *Mattoon*, 26 FCC Rcd at 12687 (holding that granting a waiver to a single application to file for a major change outside a filing window abrogates the *Ashbacker* rights of potential applicants who are restricted by that window).

<sup>31</sup> See *Reuters Ltd. V. FCC*, 781 F.2d 946, 951 (D.C. Cir. 1986) (“*Ashbacker*’s teaching applies not to prospective applicants, but only to parties whose applications have been declared mutually exclusive”) (emphasis in original).

<sup>32</sup> See *Rainbow Broadcasting v. FCC*, 949 F.2d 405, 408-09 (D.C. Cir. 1991) (holding that the Commission is not required to open all frequencies for competing applications, as long as it provides a reasoned explanation of its decision not to do so); *Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services*, Report and Order, 21 FCC Rcd 14212, 14217, para. 9 (2006).

<sup>33</sup> *Report and Order*, 34 FCC Rcd at 3460, paras. 5-6.

<sup>34</sup> While Fellowship cites *Augsberg*, *supra* note 27, that is a Bureau-level item that is not binding on the Commission. See *Comcast Corp. v. FCC*, 526 F.3d 763, 769 (D.C. Cir. 2008).

<sup>35</sup> *Report and Order*, 34 FCC Rcd at 3464-65, para. 14; see also 47 CFR § 74.1203(a)(3).

<sup>36</sup> Anderson Petition at 4; Anderson Reply at 1.

<sup>37</sup> See *Report and Order*, 34 FCC Rcd at 3463-66 paras. 12-15; Anderson Comments at 3 (advocating a universal six-listener minimum).

<sup>38</sup> See *Report and Order*, 34 FCC Rcd at 3464-65, para. 14.



protected contour.<sup>39</sup> Because we thoroughly considered this issue during the proceeding, we dismiss Anderson's objection to the listener complaint minimums established in the *Report and Order*.<sup>40</sup> On alternative and independent grounds, we deny this argument. The three-listener complaint minimum does not apply to all LPFM stations, as Anderson implies, but only to those with a service contour population of less than 5,000 persons.<sup>41</sup> This is a targeted and proportionate minimum, applicable to a small subset of LPFM stations; therefore, we affirm the *Report and Order* on this issue.

10. *Multiple complaints from a single building.* We deny the LPFM Coalition's argument that the Commission violated both the Administrative Procedure Act (APA)<sup>42</sup> and the petition clause of the U.S. Constitution<sup>43</sup> by holding that multiple listener complaints from the same building will not be applied toward the listener complaint minimum.<sup>44</sup>

11. First, we reject the LPFM Coalition's assertion that the APA prevents the Commission from adopting a final rule that differs from a proposal in an NPRM.<sup>45</sup> To the contrary, the APA requires that, after providing the public with an opportunity to comment, an agency must then consider the "relevant matter presented."<sup>46</sup> Mere consideration of comments as a "matter of grace" is not enough; the agency's review must be made "with a mind that is open to persuasion."<sup>47</sup> In the *NPRM*, the Commission proposed to allow multiple complaints from a single building.<sup>48</sup> However, in the *Report and Order*, the Commission agreed with commenters that the new rules should ensure that listener complaints come from "multiple, unique, locations" to demonstrate a "real and consistent interference problem."<sup>49</sup> To verify that the subject translator interference is the actual cause of reception issues, we found that multiple complaints from the same building should not be accepted because they could all arise from factors other than translator interference (for example, terrain shielding of the desired signal at that location).<sup>50</sup> Therefore, we concluded that a "real and consistent interference problem" must be evidenced by listener complaints from multiple, unique locations, as commenters suggested. In sum, we find that we complied

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<sup>39</sup> See *id.*

<sup>40</sup> See 47 CFR § 1.429(l)(3) (providing for dismissal of a petition for reconsideration that plainly does not warrant consideration by the Commission, for example, "if the petition rel[ies] on arguments that have been fully considered and rejected by the Commission within the same proceeding"); *Connect America Fund*, 28 FCC Rcd at 2573, para. 3.

<sup>41</sup> REC suggests that Anderson misunderstands the scope of the three listener complaint minimum for LPFM stations, which applies only to "deep rural" LPFMs with a service contour population of less than 5,000 persons, or, according to REC, only 370 out of 2,181 licensed LPFM stations. REC Opposition at 2.

<sup>42</sup> *Administrative Procedure Act*, Pub.L. 79-404, 60 Stat. 237 (1946); 5 U.S.C. § 551 *et seq.*

<sup>43</sup> U.S. Const. Amend. 1 (Petition Clause) ("Congress shall make no law ... abridging ... the right of the people peaceably to assemble, and to petition the Government for a redress of grievances").

<sup>44</sup> LPFM Coalition Petition at 11-18, paras. 28-43. In the *Report and Order*, we held that "multiple listener complaints from a single building (e.g., complaints from multiple dwellers of an apartment building or house) or workplace will not count beyond the first complaint toward the listener complaint minimum." *Report and Order*, 34 FCC Rcd at 3466, para. 15.

<sup>45</sup> See LPFM Coalition Petition at 11-13, paras. 28-31.

<sup>46</sup> 5 U.S.C. § 533(c).

<sup>47</sup> *Advocates for Hwy. & Auto Safety v. Fed. Hwy. Admin.*, 28 F.3d 1288, 1292 (D.C. Cir. 1994) (citing *McLouth Steel Products Corp. v. Thomas*, 838 F.2d 1317, 1323 (D.C. Cir. 1988)).

<sup>48</sup> *NPRM*, 33 FCC Rcd at 4737, para. 17.

<sup>49</sup> *Report and Order*, 34 FCC Rcd at 3465-66, para. 15.

<sup>50</sup> *Id.*

with APA requirements by carefully reviewing the record and modifying our earlier proposal in response to comments received.

12. We also find no merit to and deny the LPFM Coalition's argument that this ruling denied radio listeners their right under the Petition Clause of the First Amendment to petition the government for a redress of grievances. The LPFM Coalition does not cite to—and we are not aware of—any court or agency precedent supporting its assertion that the Petition Clause requires the Commission to accept and consider all listener complaints of translator interference. To the contrary, the Supreme Court has held that “[n]othing in the First Amendment or in this Court's case law interpreting it suggests that the rights to speak, associate, and petition require government policymakers to listen or respond to communications of members of the public on public issues . . . Government makes so many policy decisions affecting so many people that it would likely grind to a halt were policymaking constrained by constitutional requirements on whose voices must be heard.”<sup>51</sup> Moreover, from a practical standpoint, it is not necessary to obtain multiple listener complaints from a single location to determine whether that location is experiencing interference. One listener complaint is sufficient to establish the likelihood of translator interference at each location.

13. In response to the underlying concern for listeners expressed by the LPFM Coalition, however, we clarify the scope and applicability of the single building provision. In the *Report and Order*, we stated merely that “multiple listener complaints from a single building . . . will not count beyond the first complaint toward the six-complaint minimum.”<sup>52</sup> But we did not exempt the subject translator operator from the subsequent requirement to remediate each otherwise valid interference complaint submitted with the translator interference claim package, including those beyond the required complaint minimum set out in section 74.1203(a)(3). Therefore, multiple valid complaints from the same building, although not applicable toward complaint minimums beyond the first complaint, must nonetheless be remediated if all threshold requirements are otherwise met.<sup>53</sup>

14. *Zone of potential interference.* We affirm the requirement in the *Report and Order* that a station submitting a translator interference claim package must include U/D data demonstrating that at each listener location the ratio of undesired to desired signal strength exceeds -20 dB for co-channel situations, -6 dB for first-adjacent channel situations or 40 dB for second- or third-adjacent channel situations, calculated using the Commission's standard contour prediction methodology.<sup>54</sup> However, this *Order on Reconsideration* amends the cross-references in new sections 74.1203(a)(3) and 74.1204(f) to refer to section 74.1204(b) rather than previously cross-referenced section 73.313. As explained in paragraph 16, *infra*, the technical guidance for calculating contours provided in sections 73.313(a) and 74.1204(b) is similar, but section 74.1204(b) also covers interfering as well as protected contours and is therefore more appropriate for calculating U/D ratios, which require both. With this change, any objection to the U/D ratio test based on section 73.313 is dismissed as moot.

15. We reject Skywaves' suggestion to allow listener complaints from anywhere within the complaining station's protected contour, even if the listener location does not satisfy the U/D test set out in the *Report and Order*.<sup>55</sup> The U/D data requirement serves as a threshold test to “eliminate obvious

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<sup>51</sup> *Minnesota State Board for Community Colleges v. Knight*, 465 U.S. 271, 272, 285 (1984) (internal citation omitted).

<sup>52</sup> *Report and Order*, 34 FCC Rcd at 3466, para. 15.

<sup>53</sup> In most cases, we would expect that any remediation would resolve interference for all users in the same building, however, there may be situations where the interfering station must take separate steps to address individual listener complaints, such as through equipment adjustment or replacement.

<sup>54</sup> *Report and Order*, 34 FCC Rcd at 3478, para. 23.

<sup>55</sup> Skywaves Petition at 2. The NAB and the Joint Oppositions support this proposal. NAB Opposition at 7, n.33; Joint Opposition at 6-7.

instances where the translator could not be the source of the alleged interference.”<sup>56</sup> Including listener complaints from areas within the complaining station’s protected contour that do not satisfy the U/D test would undermine this purpose. For example, a listener could be located on the opposite side of the protected contour from the translator station, with the complaining station’s transmitter located in between. In this situation, the translator could not possibly be the source of the alleged interference, yet under Skywaves’ proposal, we would accept the listener complaint as valid. Moreover, the strength of the complaining station’s signal within its protected contour makes the likelihood of translator interference within the protected contour exceedingly small. In the rare event that a valid U/D showing could be made for a location within a complaining station’s protected contour, we would accept a listener complaint at that location if it otherwise met the complaint requirements set out in the *Report and Order*. Finally, we are not persuaded that extending the range of potential listener complaints to include all of the complaining station’s protected contour area is necessary. Rather, if a “real and consistent” interference problem caused by a translator should occur, we anticipate that the affected station will be able to readily obtain the required minimum number of listener complaints from within the zone of potential interference as defined in the *Report and Order*.<sup>57</sup> For these reasons, we deny Skywaves’ request that we consider valid any listener complaint from within the complaining station’s protected contour but outside the “U/D zone of potential interference.”

16. *Contour prediction methodology.* In response to the Skywave Petition, we make a technical change to sections 74.1203(a)(3) and 74.1204(f) to cross-reference section 74.1204(b) rather than section 73.313 of the rules. In its Petition, Skywaves mentions that the *Report and Order* does not specify F(50,50) or F(50,10) propagation curves with respect to the 45 dBu contour limit and the U/D zone of potential interference test.<sup>58</sup> Although Skywaves does not request a rule change, we find it appropriate to make a minor change to the relevant rules to avoid any possible confusion regarding the propagation curves that should be used to prepare a U/D zone of potential interference showing. Specifically, the correct methodology is set out in section 74.1204(b), which includes guidance on using F(50, 50) curves for protected contours and F(50, 10) curves for interfering contours for the purpose of making U/D calculations. This methodology has long been used for section 74.1204(f) translator interference showings and is appropriate for the corresponding showing required by section 74.1203(a)(3).<sup>59</sup> Therefore, we change this cross-reference to provide guidance for calculating both the protected and interfering contours needed to make a U/D zone of potential interference showing.

### C. Contour Limit on Translator Interference Complaints

17. *Harm to existing translators.* We affirm the establishment in the *Report and Order* of an outer contour limit of 45 dBu signal strength of the complaining station within which interference complaints will be considered actionable.<sup>60</sup> We dismiss the Anderson and Skywaves Petitions to the extent that these petitioners contend that the adoption of the 45 dBu contour limit harms existing translator stations.<sup>61</sup> Anderson initially raised this argument in comments filed on August 6, 2018

<sup>56</sup> See *Report and Order*, 34 FCC Rcd at 3470, 3473, paras. 24, 32 n.120.

<sup>57</sup> *Id.* at 3466, 3469, paras. 15, 23.

<sup>58</sup> Skywaves Petition at 2. F(50, 50) refers to a signal that can be received at the specified field strength on 50% of the receivers, 50% of the time. Likewise, a F(50, 10) signal can be received by 50% of the receivers, 10% of the time. Both are used in U/D ratio calculations. For FM stations, the relevant propagation curve graphs are set out in section 73.333 of the rules. 47 CFR § 73.333; see also “FM and TV Propagation Curves,” <https://www.fcc.gov/media/radio/fm-and-tv-propagation-curves> (last visited July 9, 2020) (contour calculation tool).

<sup>59</sup> The 45 dBu contour limit should be determined using the same methodology as a protected contour under section 74.1204(b)(1). 47 CFR § 74.1204(b)(1).

<sup>60</sup> *Report and Order*, 34 FCC Rcd. at 3475-81, paras. 36-48.

<sup>61</sup> Anderson Petition at 1-3; Anderson Reply at 3 (arguing that the Commission failed to consider the impact of the contour limit on translator stations and their listeners, thus placing existing translator stations “in jeopardy”); (continued....)



(Anderson Comments), and again in an *ex parte* letter filed on May 1, 2019 (Anderson *Ex Parte* Letter).<sup>62</sup> Because we previously considered and rejected arguments concerning the impact of the 45 dBu contour limit on existing translator stations, we dismiss these arguments on procedural grounds.<sup>63</sup> In addition, we dismiss the arguments on this issue in the Skywave Petition because Skywave could have, but did not, comment on this subject earlier in this proceeding.<sup>64</sup> In the *Report and Order*, we considered the impact of the 45 dBu contour limit on existing translator stations, explaining that, prior to the new rules, listener complaints against translators had been subject to *no* geographic limitations.<sup>65</sup> Therefore, we dismiss this argument on procedural grounds.

18. On alternative and independent grounds, we deny these arguments on the merits. As mentioned above, under the previous rules, any interference complaint, at any distance from the complaining station, could have forced a translator station to cease operations. Therefore, Anderson's data purporting to show potential harm to existing stations does not demonstrate any increased risk of interference complaints. To the contrary, the 45 dBu contour limit—like the other measures taken in the *Report and Order*—was “designed to *protect* translator stations from specious interference complaints while preserving their fundamental characteristic as a secondary service.”<sup>66</sup> It reduces risk to translator stations rather than increasing it. Anderson's and Skywaves' objections to the 45 dBu contour limit are based on the incorrect premise that the 45 dBu contour limit represents a new, more generous “protected contour” for complaining stations.<sup>67</sup> This misunderstanding also forms the basis for Anderson's related arguments that: (1) additional analysis and data would be needed before limiting translators' “interference contours to the new 45 dBu protected contours for FM stations”; (2) the 45 dBu limit would “put into jeopardy the continued viable service from nine of the ten currently-authorized Louisville market FM translator stations”; and (3) the Commission should balance “the service area impacted by the FM translator interference to the existing station compared with the service area that the public will lose from the impacted FM translator.”<sup>68</sup>

19. Therefore, we take this opportunity to clarify that the 45 dBu contour limit has no effect on any station's protected contour or the minimum distance separation requirements set out in sections 73.807 (for LPM stations), 74.1204 (for translators), and 73.207 (for full service FM stations) of the rules.<sup>69</sup> For this reason, we reject as unfounded the arguments above as well as Anderson's contention that the 45 dBu contour represents a “dramatic extension” of a station's service area in violation of

(Continued from previous page) —————

Skywaves Petition at 3 (analyzing the overlapping contours of various full service stations and FM translators and concluding that “the vast majority of FM stations would be in a position to pursue interference complaints against one or more FM translators, and nearly every FM translator would be placed at risk of such action, should the 45 dBu protection standard stand”).

<sup>62</sup> See Anderson Comments at 2-3 (claiming to analyze the “seriously negative” impact of the limit on nine translators in the Louisville, KY, market); Anderson *Ex Parte* Letter at 2-3 (urging the Commission to analyze the effect of the limit on translators and stating that adoption of the limit would “put into jeopardy the continue, viable service” of existing translators).

<sup>63</sup> See 47 CFR § 1.429(l)(3); *Connect America Fund*, 28 FCC Rcd at 2573, para. 3.

<sup>64</sup> Skywaves relies on facts and arguments not presented to the Commission before the *Report and Order* was adopted and has not attempted to demonstrate compliance with the exceptions for such filings found in section 1.429(b) of our Rules. See 47 CFR § 1.429(b)(1)–(3).

<sup>65</sup> *Report and Order*, 34 FCC Rcd at 3477, n.146.

<sup>66</sup> *Id.* at 3480, para. 45 (emphasis added).

<sup>67</sup> Anderson Petition at 4; Skywaves Petition at 2. In the REC Opposition, REC makes a similar assertion: “this rulemaking is[sic] literally expanded every station's protected contour to 45 dBu.” REC Opposition at 1.

<sup>68</sup> See Anderson Petition at 2-3.

<sup>69</sup> See 47 CFR §§ 73.807, 74.1204, and 73.207.

section 307(b) of the Communications Act of 1934, as amended.<sup>70</sup> We also take issue with Anderson’s statement that, by “extending 45 dBu protection to LPFMs,” the Commission “more than doubl[ed] [their] 60 dBu protected contour.”<sup>71</sup> This assertion, like Anderson’s argument regarding harm to translator stations, assumes that LPFM stations were previously limited to submitting listener complaints only from within their 60 dBu contour. This was not the case. LPFM licensees, like their full-service FM station counterparts, were previously permitted to submit translator interference complaints from *any* listener location, at any signal strength contour. Again, the 45 dBu contour limit—especially when combined with other measures taken in the *Report and Order*—restricts, rather than extends, the number of situations in which an LPFM station may submit a translator interference complaint. Moreover, as stated in the *Report and Order*, the 45 dBu contour limit represents a carefully considered balance between protecting translator stations from specious interference claims on one hand while preserving existing protections for other broadcast stations on the other.<sup>72</sup> We are not persuaded to revisit that balance here.

20. *Record data.* We dismiss as already raised and rejected Anderson’s argument that the Commission relied on misleading data when we determined that there is significant listenership beyond many stations’ 54 dBu signal strength contours. In the Anderson Petition, Anderson reiterates his earlier complaints that the Nielsen audience data submitted in the record was based on CUME (five minutes per week) listening data, zip code centroids, and listeners’ home addresses.<sup>73</sup> Anderson first raised these points in the Anderson *Ex Parte* Letter.<sup>74</sup> In response, during the proceeding and again in the Joint Opposition, the Joint Commenters explain that “CUME persons” is an established industry data point, that there is a close correlation between at-home and away listening, and that the home address data serves as the “best current measure available as to radio listening at various contour strengths.”<sup>75</sup> In the *Report and Order*, we reviewed both arguments and concluded that the data presented in the record formed an adequate basis for approximating nationwide listenership at various signal strength contours.<sup>76</sup> On alternative and independent grounds, we deny Anderson’s arguments on the merits. As an initial matter, the Nielsen data in the record was supplemented and corroborated by independent listenership data submitted by other broadcasters from various markets nationwide.<sup>77</sup> Therefore, while acknowledging that CUME, zip code-based, and home address-based information may be over- or under-inclusive in individual cases (for example, when a zip code centroid is within a certain signal strength contour but the listening occurs outside it), we conclude that this data is sufficiently reliable with respect to broad listenership patterns that the Commission was “on solid empirical ground”<sup>78</sup> when it concluded that “[t]he record indicates that a significant amount of FM listening occurs beyond the average 54 dBu contour and that setting a limit on actionable complaints at this signal strength would be economically damaging to many broadcasters.”<sup>79</sup>

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<sup>70</sup> See Anderson Petition at 4 (citing 47 U.S.C. § 307(b)).

<sup>71</sup> Anderson Petition at 4.

<sup>72</sup> See *Report and Order*, 34 FCC Rcd at 3460, 3477, paras. 4, 46.

<sup>73</sup> *Id.* at 2.

<sup>74</sup> See Anderson *Ex Parte* Letter at 3; Joint Opposition at 3.

<sup>75</sup> See Joint Opposition at 3; Joint Commenters Comments at 5; *Report and Order*, 34 FCC Rcd at 3478, n.158.

<sup>76</sup> *Report and Order*, 34 FCC Rcd at 3478, n.158; see 47 CFR § 1.429(l)(3); *Connect America Fund*, 28 FCC Rcd at 2573, para. 3.

<sup>77</sup> *Id.* at 3475, para. 37; Joint Opposition at 3-5.

<sup>78</sup> See Joint Opposition at 5.

<sup>79</sup> See *Report and Order*, 34 FCC Rcd at 3477, para. 40.

21. *LCRA equal in status requirement.* We dismiss as previously raised and rejected Anderson's and the LPFM Coalition's argument that the new rules contravene LCRA section 5(3), which directs the Commission, "when licensing new FM translator stations, FM booster stations, and low-power FM stations," to ensure that they "remain equal in status and secondary to existing and modified full service FM stations."<sup>80</sup> Anderson argues that the 45 dBu contour, specifically, violates this "equal in status" requirement, whereas the LPFM Coalition makes the broader claim that the Commission failed to consider "LPFM's equal need for certainty."<sup>81</sup> The applicability of the LCRA "equal in status" provision was raised by other commenters in response to the *NPRM* and we thoroughly addressed it in the *Report and Order*, as follows:

In response to concerns expressed by LPFM advocates, we clarify that establishment of an outer contour limit does not conflict with LCRA Section 5(3), which requires that when licensing new translator stations, the Commission must ensure that translator, booster, and LPFM stations "remain equal in status and secondary to existing and modified full-service FM stations." It is well established that the LCRA does not require identical regulation of each secondary service, and in any case, because the LPFM service rules contain a similar contour-based restriction on interference complaints, the establishment of an outer contour limit on translator interference complaints brings the translator rules into closer harmony with the LPFM rules.<sup>82</sup>

We affirm this analysis and reject the Anderson and LPFM Coalition Petitions to the extent that they argue that the LCRA section 5(3) "equal in status" provision prohibits the establishment of an outer contour limit on translator interference claims.

22. *Bias.* We deny Fellowship's claim that the Commission acted with bias against the LPFM services by rejecting objections filed by LPFM advocates to pending translator applications in the *AM Revitalization* proceeding.<sup>83</sup> This complaint is largely based on matters unrelated to the present proceeding.<sup>84</sup> Moreover, Fellowship ignores the Commission's longstanding stewardship of this valuable and unique service.<sup>85</sup> In addition, as discussed herein, many of the measures taken in the *Report and Order* have equivalent rules already applicable to the LPFM service, such as the ability to change channels to resolve interference and the contour limitation on listener complaints.<sup>86</sup> Thus, the new rules do not prioritize translator service over LPFM service but bring the two services into closer harmony with

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<sup>80</sup> Anderson Petition at 4; Anderson Reply at 1-2; LPFM Coalition Petition at 5-6; *see* 47 CFR § 1.429(l)(3); *Connect America Fund*, 28 FCC Rcd at 2573, para. 3.

<sup>81</sup> LPFM Coalition Petition at 5-6; Anderson Petition at 4. Anderson advocates setting more restrictive limits on translator interference complaints, specifically, a 54 dBu contour limit for full-service stations and a 60 dBu contour limit for LPFM stations. Anderson Petition at 1, 4.

<sup>82</sup> *Report and Order*, 34 FCC Rcd at 3481, para. 47 (internal citations omitted); *see also* REC Opposition at 1-2 (citing 47 CFR § 1.429(b)(1)); NAB Opposition at 4. Under the LPFM service rules, a full-power station is only protected from LPFM interference to its 70 dBu contour. *See* 47 CFR § 73.809.

<sup>83</sup> Fellowship Petition at 4-5 (citing, e.g., *Center for International Media Action*, Letter Decision, 33 FCC Rcd 5394, 5396-97 (MB 2018) (dismissing, and alternatively denying, informal objections filed against every translator application pending as of May 16, 2018). Fellowship also complains that the Commission has thus far failed to act on a petition for rulemaking filed by REC Networks on June 13, 2018. The Commission has now acted on that petition, so Fellowship's argument is moot. *See Amendments of Parts 73 and 74 to Improve the Low Power FM Radio Service Technical Rules*, Report and Order, 35 FCC Rcd 4115, (2020).

<sup>84</sup> Fellowship makes no attempt to demonstrate that the Commission acted with an "unalterably closed mind on matters critical to the disposition of the proceeding." *See Association of National Advertisers v. FTC*, 627 F.2d 1151, 1170 (D.C. Cir. 1979).

<sup>85</sup> *See generally*, *Creation of a Low Power Radio Service*, Report and Order, 15 FCC Rcd 2205 (2000).

<sup>86</sup> *See Report and Order*, 34 FCC Rcd at 3462, 3481, paras. 8, 47.

each other. Finally, as we stated in the *Report and Order*, improving the translator interference process benefits all parties concerned, including LPFM stations, by providing a clearly defined, expeditious, and fair process for resolving translator interference complaints.<sup>87</sup>

#### D. Pending Proceedings

23. *Retroactivity.* We affirm the holding in the *Report and Order* that rules adopted therein would be applicable to any pending applications or complaints that had not been acted upon as of the date the new rules became effective.<sup>88</sup> We reject the LPFM Coalition's argument that the rules adopted in the *Report and Order* imposed "impermissible retroactive burdens" on those that had interference complaints pending against translator stations when we adopted the *Report and Order*.<sup>89</sup> To establish that the *Report and Order* had an impermissible retroactive effect, LPFM Coalition must demonstrate that the rulemaking did one of the following: "increase[d] a party's liability for past conduct," "impose[d] new duties with respect to transactions already completed," or "impair[ed] rights a party possessed when [it] acted."<sup>90</sup> As described in detail below, although the rules adopted in the *Report and Order* apply to complaints against translator stations that were pending at the time the rules were adopted, LPFM Coalition failed to make the requisite showing. Therefore, we find that our rules do not have an impermissible retroactive effect.

24. As an initial matter, we agree with the LPFM Coalition that the *Report and Order* is part of a rulemaking proceeding and that rules adopted as a result of a rulemaking, absent specific statutory authority, may not be applied retroactively—i.e., it must only have "future effect designed to implement, interpret, or prescribe law or policy."<sup>91</sup> But the fact that the Commission applies its new interference rules to pending complaints does not mean that these rules are being applied retroactively. Significantly, the LPFM Coalition argument to the contrary fails to show that any of the three ways in which a rule can be retroactive as set forth in *Landgraf* are present here.

25. First, applying the new rules to interference complaints pending against translator stations does not increase complainants' "liability for past conduct."<sup>92</sup> There is no liability imposed on parties that submit interference complaints; therefore, the LPFM Coalition has failed to show that the rulemaking increased liability on complainants. Second, applying the new rules to interference complaints pending against translator stations does not "impose new duties with respect to transactions already completed."<sup>93</sup> Interference complaints remain pending until acted upon; thus, complaints that were pending at the time we adopted the *Report and Order* cannot be considered "completed" transactions. Third, applying the new rules to interference complaints pending against translator stations does not "impair rights a party possessed when [it] acted." The LPFM Coalition does not demonstrate or provide support for the position that the mere filing of an interference complaint endows the complainant with vested rights, or that such rights, if established, would be impaired by application of the new rules. The purpose of the interference

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<sup>87</sup> See *Report and Order*, 34 FCC Rcd at 3457, para. 1 ("These measures are designed to limit or avoid protracted and contentious interference disputes, provide translator licensees additional investment certainty and flexibility to remediate interference, and provide affected stations earlier and expedited resolution of interference complaints."); NAB Opposition at 2-3 (arguing that the *Report and Order* reflects a "rational, evenhanded approach" to balancing LPFM and translator interests).

<sup>88</sup> *Report and Order*, 34 FCC Rcd at 3482, para. 49 ("Applications or complaints that have not been acted upon as of the effective date of the rules adopted in this *Report and Order* will be decided based on the new rules.").

<sup>89</sup> LPFM Coalition Petition at 6-11, paras. 14-27.

<sup>90</sup> *Landgraf v. USI Film Prods.*, 511 U.S. 244, 280 (1994) (*Landgraf*); *DIRECTV, Inc. v. FCC*, 110 F.3d 816, 825-26 (D.C. Cir. 1997).

<sup>91</sup> LPFM Coalition Petition at 6-10; 5 U.S.C. § 551(4).

<sup>92</sup> *Landgraf*, 511 U.S. at 280.

<sup>93</sup> *Id.*

complaint regime addressed in the *Report and Order* is to resolve complaints that FM translators are causing interference to listeners of FM and LPFM stations. Nothing in the *Report and Order* eliminated the ability of complainants, including those with pending complaints, to avail themselves of the Commission's processes to resolve such interference concerns. Rather, the rules adopted in the *Report and Order* changed only the way in which these claims are adjudicated by requiring more specific evidence. As noted in the *Report and Order*, pending complainants were provided with the opportunity to supplement their pending complaints to meet the requirements of these new rules. In addition, to the extent a pending complaint was dismissed for failure to comply with the new rules, nothing precludes that same complainant from pursuing a new interference complaint in the future that complies with the new rules. Thus, applying the new rules to pending complaints does not "impair rights a party possessed when [it] acted" because both before and after the effective date of the new rules, FM translators are prohibited from causing interference to listeners of FM and LPFM stations and the Commission provides a complaint process for resolving such interference complaints. We therefore deny the contention that applying the new rules to interference complaints pending against translator stations had an impermissible retroactive effect.

#### IV. PROCEDURAL MATTERS.

26. *Paperwork Reduction Act Analysis.* This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. Therefore, it does not contain any new or modified information collection burdens for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198.

27. *Congressional Review Act.* The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs that these rules are "non-major" under the Congressional Review Act, 5 U.S.C. § 804(2). The Commission will send a copy of this Order on Reconsideration to Congress and the Government Accountability Office pursuant to 5 U.S.C. § 801(a)(1)(A).

28. *Final Regulatory Flexibility Certification.* The Regulatory Flexibility Act of 1980, as amended (RFA),<sup>94</sup> requires that a regulatory flexibility analysis be prepared for notice-and-comment rule making proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."<sup>95</sup> The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."<sup>96</sup> In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.<sup>97</sup> A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.<sup>98</sup>

29. This Order on Reconsideration disposes of petitions for reconsideration in MB Docket No. 18-119. In the *Report and Order* in this proceeding, the Commission issued a Final Regulatory

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<sup>94</sup> See 5 U.S.C. § 603. The RFA, see 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

<sup>95</sup> 5 U.S.C. § 605(b).

<sup>96</sup> 5 U.S.C. § 601(6).

<sup>97</sup> 5 U.S.C. § 601(3) (incorporating by reference the definition of "small-business concern" in 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register." 5 U.S.C. § 601(3).

<sup>98</sup> 15 U.S.C. § 632.



Flexibility Analysis (FRFA) that conforms to the RFA, as amended.<sup>99</sup> The Commission received no petitions for reconsideration of that FRFA. This Order on Reconsideration does not alter the Commission's previous analysis under the RFA.

30. In this Order on Reconsideration, the Commission corrects a cross-reference in the rules to direct broadcast applicants and licensees to a more comprehensive set of guidelines for calculating undesired-to-desired (U/D) signal strength ratios in the context of a translator interference claim. Specifically, although both the original cross-reference (47 CFR § 73.313) and the new cross-reference (47 CFR § 74.1204(b)) accurately describes the Commission's standard contour prediction methodology, the amended cross-reference includes specific instructions for calculating interfering as well as protected contours, both of which are used when calculating U/D ratios. Thus, the amended cross-reference is substantially similar to the original cross-reference but provides additional useful information and is more technically accurate for the type of calculation involved. This change is minor and is not anticipated to have any economic effect on broadcast licensees, including small entities. Therefore, we certify that the requirements of the Order on Reconsideration will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of the Order on Reconsideration, including a copy of this Final Regulatory Flexibility Certification, in a report to Congress pursuant to the Congressional Review Act.<sup>100</sup> In addition, the Order on Reconsideration and this final certification will be sent to the Chief Counsel for Advocacy of the SBA, and will be published in the Federal Register.<sup>101</sup>

## V. ORDERING CLAUSES

31. **IT IS ORDERED** that, pursuant to Sections 1, 2, 4(i), 4(j), 301, 303, 307, 308, 309, 319, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 154(j), 301, 303, 307, 308, 309, 319, and 405, and Section 1.429 of the Commission's rules, 47 CFR § 1.429, this Order on Reconsideration in MB Docket No. 18-119 **IS ADOPTED** and **SHALL BE EFFECTIVE** 30 days after publication in the Federal Register.

32. **IT IS FURTHER ORDERED** that Part 74 of the Commission rules **IS AMENDED** as set forth in Appendix A and that such rule amendment **SHALL BE EFFECTIVE** 30 days after publication in the Federal Register.

33. **IT IS FURTHER ORDERED** that the Petition for Reconsideration filed by Louis P. Vito on July 16, 2019, **IS DISMISSED** in its entirety.

34. **IT IS FURTHER ORDERED** that the Petition for Reconsideration filed by Charles M. Anderson on July 11, 2019, **IS DISMISSED** to the extent set out in paragraphs 9, 17, 20, and 21, *supra*, and **IS DENIED** to the extent set out in paragraphs 9 and 19, *supra*.

35. **IT IS FURTHER ORDERED** that the Petition for Reconsideration filed by the LPFM Coalition on July 15, 2019, **IS DISMISSED** to the extent set out in paragraphs 4, and 21, *supra*, and **IS DENIED** to the extent set out in paragraphs 7, 10-13, 21, and 23-25 *supra*.

36. **IT IS FURTHER ORDERED** that the Petition for Reconsideration filed by KGIG-LP, Salida, California/Fellowship of the Earth on July 15, 2019, **IS DISMISSED** to the extent set out in paragraphs 4 and 8, *supra*, and **IS DENIED** to the extent set out in paragraphs 5-6, 8 and 22, *supra*.

37. **IT IS FURTHER ORDERED** that the Petition for Reconsideration filed by Skywaves Communications LLC on July 15, 2019, **IS DISMISSED** to the extent set out in paragraph 17 and 19, *supra*, and **IS DENIED** to the extent set out in paragraphs 15 and 18, *supra*.

<sup>99</sup> *Report and Order*, 44 FCC Rcd at Appendix C; see 5 U.S.C. §§ 601-612.

<sup>100</sup> 5 U.S.C. § 801(a)(1)(A).

<sup>101</sup> 5 U.S.C. § 605(b).

38. **IT IS FURTHER ORDERED** that the Stay Request filed by the LPFM Coalition on July 15, 2019, **IS DISMISSED** as moot.

39. **IT IS FURTHER ORDERED** that, should no further petitions for reconsideration or petitions for judicial review be timely filed, MB Docket No. 18-119 **SHALL BE TERMINATED**, and its docket **CLOSED**.

40. **IT IS FURTHER ORDERED** that the Commission **SHALL SEND** a copy of this Order on Reconsideration, including the Final Regulatory Flexibility Certification, in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

41. **IT IS FURTHER ORDERED** that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, **SHALL SEND** a copy of this Order on Reconsideration, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

## APPENDIX A

## Final Rule Changes

Part 74 of Chapter 5 of Title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 74 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, 307, 309, 310, 336, and 554.

2. Amend § 74.1203 by revising (a)(3) to read as follows:

**§ 74.1203 Interference.**

(a) \* \* \*

(3) The direct reception by the public of the off-the-air signals of any full-service station or previously authorized secondary station. Interference will be considered to occur whenever reception of a regularly used signal is impaired by the signals radiated by the FM translator or booster station, regardless of the channel on which the protected signal is transmitted; except that no listener complaint will be considered actionable if the alleged interference occurs outside the desired station's 45 dBu contour. Interference is demonstrated by: (1) the required minimum number of valid listener complaints as determined using Table 1 of this section and defined in § 74.1201(k) of the part; (2) a map plotting the specific location of the alleged interference in relation to the complaining station's 45 dBu contour, (3) a statement that the complaining station is operating within its licensed parameters, (4) a statement that the complaining station licensee has used commercially reasonable efforts to inform the relevant translator licensee of the claimed interference and attempted private resolution; and (5) U/D data demonstrating that at each listener location the undesired to desired signal strength exceeds -20 dB for co-channel situations, -6 dB for first-adjacent channel situations or 40 dB for second- or third-adjacent channel situations, calculated using the methodology set out in § 74.1204(b).

\* \* \* \* \*

3. Amend § 74.1204 by revising paragraph (f) to read as follows:

**§ 74.1204 Protection of FM broadcast, FM Translator and LP100 stations.**

\* \* \* \* \*

(f) An application for an FM translator station will not be accepted for filing even though the proposed operation would not involve overlap of field strength contours with any other station, as set forth in paragraph (a) of this section, if grant of the authorization will result in interference to the reception of a regularly used, off-the-air signal of any authorized co-channel, first, second or third adjacent channel broadcast station, including previously authorized secondary service stations within the 45 dBu field strength contour of the desired station. Interference is demonstrated by:

(1) The required minimum number of valid listener complaints as determined using Table 1 to § 74.1203(a)(3) and defined in § 74.1201(k) of the part;

(2) A map plotting the specific location of the alleged interference in relation to the complaining station's 45 dBu contour;

(3) A statement that the complaining station is operating within its licensed parameters;

(4) A statement that the complaining station licensee has used commercially reasonable efforts to inform the relevant translator licensee of the claimed interference and attempted private resolution; and

(5) U/D data demonstrating that at each listener location the undesired to desired signal strength exceeds -20 dB for co-channel situations, -6 dB for first-adjacent channel situations or 40 dB for second- or third-adjacent channel situations, calculated using the methodology set out in paragraph (b) of this section.

\* \* \* \* \*